

## **REMARKS**

### **Allowed and Allowable Subject Matter**

The Applicant thanks the Examiner for the indication that claims 36-40 are allowed and that claims 7, 8, 11-13, 15, 17, 19, 21, 23, 27, 28, 42 and 43 would be allowable if rewritten in independent form. To that end, the Applicant has rewritten dependent claims 19, 21 and 27 in independent form. Accordingly, rewritten independent claims 19, 21 and 27 are submitted to be in condition for allowance.

### **Claim Rejections**

Claims 1-4, 6, 9, 10, 14, 20, 22, 24, 25, 29, 34 and 34 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,353,952 to Wells ("the '952 patent"). Additionally, claims 1-6, 9, 10, 14, 16, 17, 20, 22, 24, 25, 29, 31 and 33-35 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,813,791 to Mossbeck et al. ("the '791 patent"). Finally, claims 25, 26, 29, 30-32 and 41 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,398,199 to Barber ("the '199 patent").

### **The '791 Patent Does Not Qualify as Prior Art**

With regard to the '791 patent to Mossbeck et al., the Applicant submits that this reference is not prior art to the subject application. Specifically, the '791 patent was filed on March 4, 2003. However, the subject application claims the benefit of U.S. Provisional Application Serial No. 60/429,626 which was filed on November 27, 2002. Accordingly, the '791 patent does not qualify as prior art to the subject application under 35 U.S.C. §102(e). The Applicant therefore respectfully requests withdrawal of the rejection of claims 1-6, 9, 10, 14, 16, 17, 20, 22, 24, 25, 29, 31 and 33-35 as being anticipated by the '791 patent.

**Independent Claim 1 and Dependent Claims 2-19**

Claims 1-4, 6, 9, 10 and 14 have been rejected as being anticipated by the '791 patent to Mossbeck et al. As indicated above, the '791 patent does not qualify as prior art to the subject application. Accordingly, the rejection of claims 1-6, 9, 10, 14, 16 and 17 as being anticipated by the '791 patent is moot.

Independent claim 1 stands rejected as being anticipated by the '952 patent to Wells. Independent claim 1 has been amended to recite that "each of said coil springs are individually encased in a pocket". The Applicant submits that this feature is neither disclosed nor suggested in the '952 patent. Specifically, as shown in Figures 1, 1A, 2A, 3A, 4A and 5A, each of the short and tall coil springs are free standing, with no indication or suggestion that the coil springs are individually encased in a pocket, as now recited in independent claim 1. As should be appreciated, individually encasing the coils springs in pockets provides the capability of varying the firmness of the coil springs by correspondingly varying the degree to which the coil springs are pre-loaded in compression, while at the same time providing the innerspring assembly with the added feature of allowing the set of coil springs having the higher elevation to be compressed upon initial loading, followed by compression of both sets of coil springs upon continued loading. The '952 patent nor any of the cited references teach this combination of features.

For at least the reasons set forth above, the Applicant submits that independent claim 1 is patentable over the art of record, whether considered alone or in combination. Accordingly, the Applicant respectfully requests withdrawal of the rejection of independent claim 1. Dependent claims 2, 3 and 6-8 depend either directly or indirectly from independent base claim 1 and are submitted to be patentable for at least the reasons supporting the patentability of independent claim 1.

Dependent claim 4 stands rejected as being anticipated by the '952 patent to Wells. The Applicant has rewritten dependent claim 4 in independent form and submits that the '952 patent fails to teach or suggest that "said first set of coils springs has a first height" and "said second set of coil springs having a second height that is substantially equal to said first height". One embodiment illustrating this arrangement is illustrated in Figure 14 of the subject application wherein each of the first and second sets of coil springs 102 has substantially the same height  $h$ , yet are still arranged such that the upper surfaces 102a of the first and second sets of coils springs are positioned at offset elevations. With regard to the '952 patent, in each of the illustrated embodiments, the short and tall coil springs have significantly different heights. Indeed, none of the illustrated embodiments include first and second sets of coils having upper surfaces that are positioned at offset elevations and which have substantially equal heights. For at least this reason, the Applicant submits that rewritten independent claim 4 is patentable over the art of record, whether considered alone or in combination. Accordingly, the Applicant respectfully requests withdrawal of the rejection of rewritten independent claim 4.

Dependent claim 5 has been solely rejected as being anticipated by the '791 patent, which the Applicant has established does not qualify as prior art. The Applicant has therefore rewritten dependent claim 5 in independent form and respectfully requests allowance of the same.

The Applicant has rewritten dependent claim 9 in independent form and submits that the '952 patent fails to teach or suggest that "at least one of said first and second sets of coil springs is pre-loaded to a compressed state". To the contrary, as shown in Figures 1, 1A, 2A, 3A, 4A and 5A of the '952 patent, each of the short and tall coil springs are free standing, with no indication or suggestion whatsoever that either of the short or tall springs are pre-loaded to a compressed state. The '952 patent fails to disclose or even suggest a feature for

constraining/maintaining either of the short and tall coil springs in compression, thereby precluding the possibility that any of the coil springs are “pre-loaded to a compressed state”, as recited in rewritten independent claim 9. Indeed, the short and tall coil springs are only compressed when someone actually lies down on the innerspring assembly, and are not in any way pre-loaded to a compressed state prior to such point in time. As should be appreciated, pre-loading a coil spring increases the exhibited degree of firmness, thereby providing the capability of varying the firmness of the innerspring assembly by correspondingly varying the degree to which the coil springs are pre-loaded in compression, while at the same time providing the innerspring assembly with the added feature of allowing the set of coil springs having the higher elevation to be compressed upon initial loading followed by compression of both sets of coil springs upon continued loading. Neither the ‘952 patent nor any of the references of record provide this combination of features.

For at least this reason, the Applicant submits that rewritten independent claim 9 is patentable over the art of record, whether considered alone or in combination. Accordingly, the Applicant respectfully requests withdrawal of the rejection of rewritten independent claim 9. Dependent claims 10 and 11 have been rewritten to depend from rewritten independent claim 9 and are submitted to be patentable for at least the reasons supporting the patentability of rewritten independent claim 9. Dependent claims 12-18 depend indirectly from rewritten independent base claim 9 and are submitted to be patentable for at least the reasons supporting the patentability of independent claim 9 and/or any intervening claims.

As indicated above, dependent claim 19 has been indicated as allowable if rewritten in independent form. To that end, the Applicant has rewritten dependent claim 19 in independent form and allowance of the same is respectfully requested.

**Independent Claim 20 and Dependent Claims 21-24**

Claims 20, 22 and 24 have been rejected as being anticipated by the '791 patent to Mossbeck et al. As indicated above, the '791 patent does not qualify as prior art to the subject application. Accordingly, the rejection of claims 20, 22 and 24 as being anticipated by the '791 patent is moot.

Independent claim 20 has been amended to recite that "each of said coil springs are individually encased in a pocket". The Applicant submits that this feature is neither disclosed nor suggested in the '952 patent for reasons similar to those set forth above with regard to independent claim 1. In summary, as shown in Figures 1, 1A, 2A, 3A, 4A and 5A, each of the short and tall coil springs are free standing, with no indication or suggestion that the coil springs are individually encased in a pocket, as now recited in independent claim 20. For at least this reason, the Applicant submits that independent claim 20 is patentable over the art of record, whether considered alone or in combination. Accordingly, the Applicant respectfully requests withdrawal of the rejection of independent claim 20.

As indicated above, dependent claim 21 has been indicated as allowable if rewritten in independent form. To that end, the Applicant has rewritten dependent claim 21 in independent form and allowance of the same is respectfully requested.

The Applicant has rewritten dependent claim 22 in independent form and submits that the '952 patent fails to teach or suggest that "said first set of coil springs is pre-loaded to a first compressed state" and "said second set of coil springs being pre-loaded to a second compressed state" such that "said first and second compressed states exhibit different degrees of firmness". These features are neither disclosed nor suggested in the '952 patent for reasons similar to those set forth above with regard to rewritten independent claim 9. In summary, as shown in Figures

1, 1A, 2A, 3A, 4A and 5A of the '952 patent, each of the short and tall coil springs are free standing, with no indication or suggestion whatsoever that the short or tall springs are pre-loaded to a compressed state, as recited in rewritten independent claim 22. Indeed, the '952 patent fails to disclose or even suggest any feature for constraining/maintaining the short and tall coil springs in compression, thereby precluding the possibility that any of the coil springs are "pre-loaded to a compressed state". For at least these reasons, the Applicant submits that independent claim 22 is patentable over the art of record, whether considered alone or in combination. Accordingly, the Applicant respectfully requests withdrawal of the rejection of rewritten independent claim 22. Dependent claims 23 and 24 depend from rewritten independent base claim 22 and are submitted to be patentable for at least the reasons supporting the patentability of independent claim 22.

**Independent Claim 25 and Dependent Claims 26-35**

Claims 25, 29 and 34 have been rejected as being anticipated by the '791 patent to Mossbeck et al. As indicated above, the '791 patent does not qualify as prior art to the subject application. Accordingly, the rejection of claims 25, 29, 31 and 33-35 as being anticipated by the '791 patent is moot. Additionally, claims 25, 26, 29, 30-32 and 41 have been rejected as being anticipated by the '199 patent to Barber.

Independent claim 25 has been cancelled without prejudice for possible consideration in a continuing application.

As indicated above, dependent claim 27 has been indicated as allowable if rewritten in independent form. To that end, the Applicant has rewritten dependent claim 27 in independent form and allowance of the same is respectfully requested. Additionally, dependent claim 26 has been amended to depend from rewritten independent base claim 27 and is submitted to be

patentable for at least the reasons supporting the patentability of independent claim 27.

Dependent claim 33 has been solely rejected as being anticipated by the '791 patent, which the Applicant has established does not qualify as prior art. The Applicant has therefore rewritten dependent claim 33 in independent form and respectfully requests allowance of the same. Additionally, dependent claims 28 and 29 have been amended to depend from rewritten independent base claim 33 and are submitted to be patentable for at least the reasons supporting the patentability of independent claim 33. Dependent claim 30 depends indirectly from rewritten independent claim 33 and is submitted to be patentable for at least the reasons supporting the patentability of independent base claim 33 and/or intervening dependent claim 29.

Dependent claims 34 and 35 have been rejected as being anticipated by the '952 patent to Wells. The Applicant has rewritten dependent claims 34 and 35 in independent form and submits that the '952 patent fails to teach or suggest that either of the short or tall coil springs are "pre-loaded to a . . . compressed state" such that "said first and second compressed states exhibit different degrees of firmness", as recited in rewritten independent claims 34 and 35. The Applicant submits that these features are neither disclosed nor suggested in the '952 patent for reasons similar to those set forth above with regard to rewritten independent claims 9 and 22. In summary, as shown in Figures 1, 1A, 2A, 3A, 4A and 5A of the '952 patent, each of the short and tall coil springs are free standing, with no indication or suggestion whatsoever that the short or tall springs are pre-loaded to a compressed state, as recited in rewritten independent claims 34 and 35.

For at least these reasons, the Applicant submits that independent claims 34 and 35 are patentable over the art of record, whether considered alone or in combination. Accordingly, the Applicant respectfully requests withdrawal of the rejection of rewritten independent claims 34

and 35. Additionally, dependent claim 31 has been amended to depend from rewritten independent base claim 35 and is submitted to be patentable for at least the reasons supporting the patentability of independent claim 35. Dependent claim 32 depends indirectly from rewritten independent claim 35 and is submitted to be patentable for at least the reasons supporting the patentability of independent base claim 35 and/or intervening dependent claim 31.

**Independent Claim 36 and Dependent Claims 37-40**

Independent claim 36 and dependent claims 37-40 have been indicated as allowed.

**Independent Claim 41 and Dependent Claims 42-47**

Independent claim 41 has been cancelled without prejudice for possible consideration in a continuing application.

As indicated above, dependent claims 42 and 43 have been indicated as allowable if rewritten in independent form. To that end, the Applicant has rewritten dependent claims 42 and 43 in independent form and allowance of the same is respectfully requested. The Applicant notes that the recitation that the first and second sets of coils springs have a “barrel-shaped outer profile” has been not been recited in rewritten independent claims 42 and 43 as this feature is not believed to be required for patentability. However, new dependent claims 44-47 have been added reciting this feature and are patentable for at least the reasons supporting the patentability of rewritten independent claims 42 and 43. Allowance of rewritten independent claims 42 and 43 and dependent claims 44-47 is respectfully requested.



**New Independent Claim 48**

New independent claim 48 has been added to the subject application and is submitted to be patentable over the art of record for at least the following reasons. Independent claim 48 recites, among other elements and features, a first set of coil springs having a first height, a second set of coil springs having a second height that is different from said first height, and “wherein at least one of said first and second sets of coil springs is pre-loaded to a compressed state”, and with one of the first and second sets of coil springs compressed upon initial loading of the innerspring assembly, and with each of the first and second sets of coil springs being compressed upon continued loading of the innerspring assembly.

The Applicant submits that these features are neither disclosed nor suggested in the ‘952 patent to Wells for reasons similar to those set forth above with regard to rewritten independent claim 9. In summary, as shown in Figures 1, 1A, 2A, 3A, 4A and 5A of the ‘952 patent, each of the short and tall coil springs are free standing, with no indication or suggestion whatsoever that the short or tall springs are pre-loaded to a compressed state, as recited in new independent claim 48. Additionally, as indicated above, the Applicant has established that the ‘791 patent to Mossbeck et al. does not qualify as prior art. Finally, the ‘199 patent to Barber fails to teach or even suggest the inclusion of a first set of coil springs having a first height and a second set of coil springs having a second height that is different from the first height, as recited in new independent claim 48. For at least these reasons, the Applicant submits that new independent claim 48 is patentable over the art of record, whether considered alone or in combination. Accordingly, allowance of new independent claim 48 is respectfully requested.

### CONCLUSION

In view of the foregoing remarks, it is respectfully submitted that pending claims 1-24, 26-40 and 42-48 are patentable over the references of record. Reconsideration of the subject application is respectfully requested. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

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